

**LEGAL STUDIES 176: TWENTIETH CENTURY AMERICAN LEGAL AND
CONSTITUTIONAL HISTORY**

SPRING 2009

TUESDAYS AND THURSDAYS 2-3:30, 166 BARROWS

Professor H. N. Scheiber

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Graduate Student Instructor

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Course Description: Development of American law and the constitutional system in the 20th century. Topics include legacy of 19th century, including the Civil War-Reconstruction Constitution; national modernization, industrialization, and the law; Progressive Era regulatory policy, criminal justice and national-state relations, freedom of speech and press, New Deal legal innovations, civil rights and race relations; war and emergency powers; modern tort liability, environmental regulation, and judicial reform; and the stages of American federalism.

Course Materials

- Hall and Karsten (2009), *The Magic Mirror: Law in American History*, 2d ed.
- Hall, Finkelman, and Ely, eds. (2005), *American Legal History: Cases & Materials*, 3d. ed. Selected readings.
- Daniels, Roger (1993), *Prisoners Without Trial: Japanese Americans in World War II*.
- Kens, Paul (1998), *Lochner v. New York: Economic Regulation on Trial*.
- In addition, a few articles on important special topics will be assigned from Moffitt reserve desk and/or from JSTOR on the web (posted on bSpace where copyrights permit).

Requirements

- There will be one **60-minute midterm and a final exam** for the course. Both exams will be closed-book. There will be no make-up exams except in the case of emergencies and documented illness.
 - **The midterm** (30% of final grade) will cover assigned readings, section material, and lecture material and will be given at 3:30 p.m. on Tuesday, March 10, 2009.
 - The **final examination** (40% of final grade) will be on May 21, 2009 from 12:30 – 3:30 p.m.

- In addition, students are required to complete **two short papers**, which will be assigned on dates to be announced in section and based primarily on assigned class readings. Each paper will be 4-6 pages in length; the two together to comprise 20% of grade.
- Finally, **attendance and informed participation** (10% of final grade) in class and section are mandatory. You will be giving one fourth of your class time to sections, and so please give it appropriate priority: it is important that you contribute to the discussions and seek to derive maximum benefit from this class time outside the lecture hall.

Assigned Readings: Specific week-by-week reading assignments will be given to you in class and on bSpace prior to the second week classes. Occasional short readings (a maximum of five articles for the semester) will be assigned no later than on Thursday in lecture class for the following week. The GSI will post these assignments to the bSpace web page for the course, under the “Schedule” tab.

- For lectures you will mostly be reading chapters in *Magic Mirror* and cases and materials in *American Legal History*. You will also be asked to read assignments for section. It is important that you stay current on the readings, as you will be expected to participate in both class and section discussions.

bSpace

Please be sure to register on bSpace at:

<https://bSpace.berkeley.edu/portal>.

Announcements and assignments will be posted on bSpace. There will be occasional additional postings (e.g., regarding “breaking news” on law and society, constitutional cases, or comments by the professor and GSI).

Accommodations for Disabled Students: If you have a disability that may require accommodations, please speak to the GSI early in the semester to make arrangements; and be certain to check to be sure your special needs are registered with the proper campus office so that the professor is informed.

Academic Integrity

You must not misrepresent your work or contribute to another student’s failure to maintain academic integrity. It is your responsibility to comply with the code of academic integrity, available at <http://students.berkeley.edu/sas/conduct.shtml>, so please familiarize yourself with this code. Those who fail to comply with the stated standards will be penalized by the University and will fail the course.

Compiled List of Readings & Themes for LS 176
Through Mid-Term Exam

I. Introduction

For 1/22: MM: Introduction (pp. 1-7); pp. 158-68; review the Glossary
ALH: pp. 107-35; 249-57

II. Race & Equal Protection

For 1/27 & 1/29: MM: pp. 142-67; 208-230
ALH: pp. 258-311; 357-75

III. *Lochner* & the Regulatory State

For 2/5: MM: 247-67
ALH: 385-410
Kens, Lochner v. New York: Economic Regulation on Trial

For 2/9: MM: 113-41
McCurdy on Justice Field & Laissez-Faire
Finish Kens, Lochner v. New York: Economic Regulation on Trial
[Additional Reading for Paper: Pound on Liberty of Contract (posted on bspace)]

IV. Progressive Era

For 2/17 & 2/19: ALH: 411-428, 461-71
Review Ch. 12 (pp. 247-67) of MM
Purcell on Legal Realism between the Wars (posted on bspace)
Paul on Legal Progressivism (posted on bspace)

V. The New Deal

For 2/24 & 2/26: ALH: 472-92
MM: Ch. 13 (268-89)
Parrish on Roosevelt & the New Deal (posted on bspace)
Bixby on the New Deal & Civil Liberties (posted on bspace)

VI. Criminal Justice Policy

For 3/3 & 3/5: ALH: 332-50; 443-50; 548-53
MM: Ch. 9 (187-207)

MIDTERM: THURSDAY, MARCH 12, 2009

Compiled List of Readings & Themes for LS 176
From Mid-Term Through Final Exam
(*Subject to adjustments*)

VII. The Modern Regulatory State, the Courts & the Economy

For 3/17 & 3/19: ALH: 571-616

MM: Ch. 16

“A Judicial Experience Myth,” *National Law Journal* [posted on bspace]

- Lectures to include material on judicial activism v. self-restraint

Spring Break: 3/23-3/27

VIII. Total War & Civil Liberties

For 3/31 & 4/2: ALH: 428-443, 450-58, 535-48, 655-75

MM: Ch. 14

Roger Daniels, *Prisoners Without Trial* [BOOK, to be read *before* Thurs. lecture]

- Special PowerPoint presentation, to take place in TBD Room on 4/2

IX. Federalism, State Constitutions, Direct Democracy & Independent State Grounds

For 4/7 & 4/9: ALH 617-54

Mosk on Independent State Grounds [posted on bspace]

New York Times series on American exceptionalism [posted on bspace]

Earl Warren & the Warren Court: The Legacy in American and Foreign Law
[distributed in class]

- Special guest lecturer on 4/7: Tamara Rice-Lave on Sexual Psychopath Laws [paper posted *for those interested* on bspace]

X. Civil Rights

For 4/14 & 4/16: ALH: 495-534

MM: Ch. 15

- Special guest lecturer on 4/14: Willoughby Anderson
CLASS WILL MEET IN WHEELER 220 ON APRIL 14TH

XI. Federalism Revisited; Science, the Environment, & Regulatory Law

For 4/21 & 4/23: ALH: 554-70

Reich on The New Property [posted on bspace]

XII. The Contemporary Law: Family Law, Church & State, & Criminal Law

For 4/28 & 4/30: *Review* ALH: 332-50; 443-50; 548-53

Review MM: Ch. 9 (187-207)

Additional readings to be assigned [and posted on bspace]

XIII. Lecture Class to be Announced

For 5/5 & 5/7: No additional reading assignments!

FINAL: THURSDAY, MAY 21, 2009